

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

RYAN GRANT,

Plaintiff,

No. 2:17-cv-1655-TSZ

V.

STIPULATED PROTECTIVE ORDER

JAMES DYMENT, BRIAN KOSHAK,
LARRY LONGLEY, BERNARD MAHONEY,
ALAN RICHARDS, and STEVEN STEWART

Defendants.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things produced or
3 otherwise exchanged: (1) police personnel files in whole or in part; (2) medical, psychological, and financial
4 records; (3) non-public tactical policies and procedures and training protocols; and (6) records that could
5 implicate the privacy rights of the plaintiff or third parties, including, but not limited to, personal identifying
6 information ("PII") such as date(s) of birth, social security number(s), personal home address(es), phone
7 number(s), and e-mail addresses; driver's license or state identification number(s); personal financial
8 information; passport information; immigration status; and criminal history and/or criminal record number(s).

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential material (as defined
11 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
12 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or
13 presentations by parties or their counsel that might reveal confidential material.

14 However, the protections conferred by this agreement do not cover information that is in the public
15 domain or becomes part of the public domain through trial or otherwise.

16 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

17 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced
18 by another party or by a non-party in connection with this case only for prosecuting, defending, or
19 attempting to settle this litigation. Confidential material may be disclosed only to the categories of
20 persons and under the conditions described in this agreement. Confidential material must be stored and
21 maintained by a receiving party at a location and in a secure manner that ensures that access is limited
22 to the persons authorized under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court
2 or permitted in writing by the designating party, a receiving party may disclose any confidential
3 material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees of counsel to
5 whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the receiving party to
7 whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular
8 document or material produced is for Attorney’s Eyes Only and is so designated;

9 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation and
10 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A to the Model Order,
11 available at www.wawd.uscourts.gov);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of confidential
14 material, provided that counsel for the party retaining the copy or imaging service instructs the service
15 not to disclose any confidential material to third parties and to immediately return all originals and
16 copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
18 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A to the Model
19 Order), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal confidential material must be separately
21 bound by the court reporter and may not be disclosed to anyone except as permitted under this
22 agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see,
2 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or
3 discovery material that qualifies for protection under this agreement must be clearly so designated
4 before or when the material is disclosed or produced.

5 (a) Information in documentary form: (e.g., paper or electronic documents and deposition
6 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating
7 party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only
8 a portion or portions of the material on a page qualifies for protection, the producing party also must
9 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
11 participating non-parties must identify on the record, during the deposition or other pretrial proceeding,
12 all protected testimony, without prejudice to their right to so designate other testimony after reviewing
13 the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the
14 deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
15 confidential. If a party or non-party desires to protect confidential information at trial, the issue should
16 be addressed during the pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a prominent place on the exterior of
18 the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If
19 only a portion or portions of the information or item warrant protection, the producing party, to the
20 extent practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
22 qualified information or items does not, standing alone, waive the designating party’s right to secure
23 protection under this agreement for such material. Upon timely correction of a designation, the

1 receiving party must make reasonable efforts to ensure that the material is treated in accordance with
2 the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
7 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a
8 confidentiality designation by electing not to mount a challenge promptly after the original designation
9 is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
11 confidential designations without court involvement. Any motion regarding confidential designations
12 or for a protective order must include a certification, in the motion or in a declaration or affidavit, that
13 the movant has engaged in a good faith meet and confer conference with other affected parties in an
14 effort to resolve the dispute without court action. The certification must list the date, manner, and
15 participants to the conference. A good faith effort to confer requires a face to-face meeting or a
16 telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention,
18 the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7
19 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such
20 motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the
22 challenging party to sanctions. All parties shall continue to maintain the material in question as
23 confidential until the court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- 5 (a) promptly notify the designating party in writing and include a copy of the subpoena or court
6 order;
7 (b) cooperate with respect to all reasonable procedures sought to be pursued by the designating
8 party whose confidential material may be affected.

9 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
11 material to any person or in any circumstance not authorized under this agreement, the receiving party
12 must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its
13 best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons
14 to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that
15 such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached
16 as Exhibit A to the Model Order.

17 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
18 MATERIAL

19 When a producing party gives notice to receiving parties that certain inadvertently produced
20 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
21 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
22 modify whatever procedure may be established in an e-discovery order or agreement that provides for
23

1 production without prior privilege review. The parties agree to the entry of a non-waiver order under
2 Fed. R. Evid. 502(d) as set forth herein.

3 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

4 Within 60 days after the termination of this action, including all appeals, each receiving party
5 must return all confidential material to the producing party, including all copies, extracts and
6 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.
7 Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed
8 with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits,
9 expert reports, attorney work product, and consultant and expert work product, even if such materials
10 contain confidential material. The confidentiality obligations imposed by this agreement shall remain
11 in effect until a designating party agrees otherwise in writing or a court orders otherwise.

12
13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 DATED: 6/28/2018

/s/ Josh Johnson
/s/ Kerala Cowart
Attorneys for Defendants

17 DATED: 6/28/2018

/s/ David Whedbee
/s/ Sam Kramer
Attorneys for Plaintiff

ORDER

The parties' stipulated motion, docket no. 15, is GRANTED, and PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: July 6, 2018

Thomas S. Bally

Thomas S. Zilly
United States District Judge